Office of Chief Counsel Internal Revenue Service

memorandum

CC:NER:BRK:TL-N-3706-99

RDCamacho

date:

to: Chief, Examination Division, Brooklyn District

Attn: Bob Blumenfeld, Team Coordinator

from: District Counsel, Brooklyn

subject:

THIS DOCUMENT MAY INCLUDE CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATE PROCESS PRIVILEGES, AND MAY ALSO HAVE BEEN PREPARED IN ANTICIPATION OF LITIGATION. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE IRS, INCLUDING THE TAXPAYER INVOLVED, AND ITS USE WITHIN THE IRS SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT IN RELATION TO THE MATTER OF THE CASE DISCUSSED HEREIN. THIS DOCUMENT IS ALSO TAX INFORMATION OF THE INSTANT TAXPAYER WHICH IS SUBJECT TO I.R.C. § 6103.

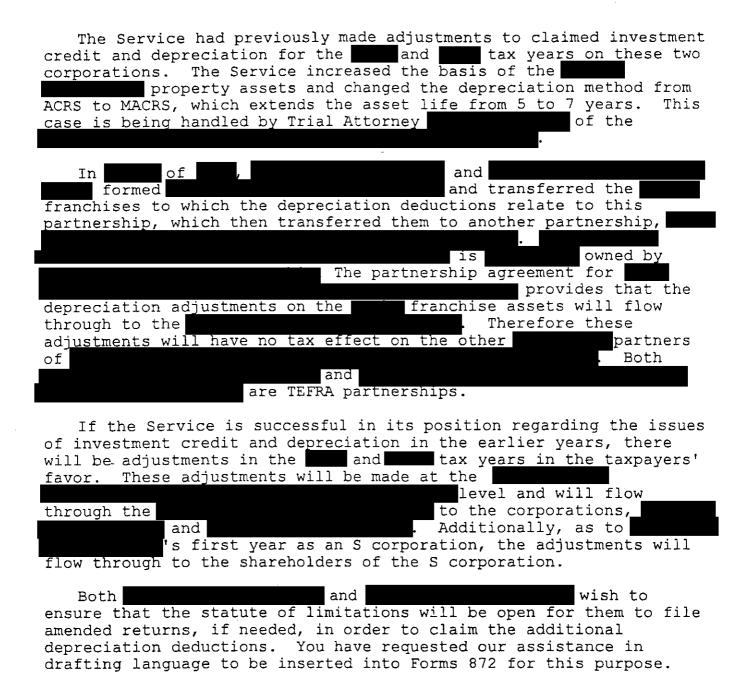
This is in response to your request dated June 8, 1999 in which you requested our assistance in drafting language to be inserted into Forms 872 to be used in the above captioned case.

FACTS

It is our understanding that the facts of this case are as follows:

There is currently a CEP audit being performed on
for theand
tax years and for
) for taxable years ending July 31, and July
31, is a 1120 corporation and
was an 1120 corporation until
thereafter became an 1120S corporation for the tax period from
until It is our understanding from your
memorandum that S Corp. is not subject to TEFRA
rules since it fits within the small business exception. Temp. Treas
Reg. § 301.6241-1T(c)(2)(repealed for tax years beginning after
December 31, 1996).

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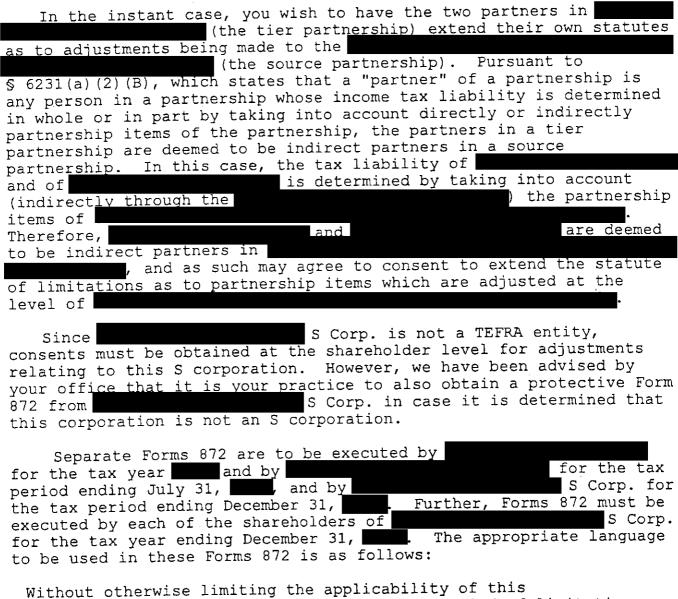


ANALYSIS

Pursuant to I.R.C. § 6229(b)(1)(A), partners in a TEFRA partnership can extend their own period of limitations for the assessment of the partnership and affected items, however, specific language is required by § 6229(b)(3). In most cases, we do not encourage obtaining consents at the partner level because of the potential tracking problems that may arise. For administrative purposes, it is simpler to manage one uniform expiration date at the

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partnership level than to manage numerous individual expiration dates. In the instance case, however, since the statute is being extended to benefit the taxpayers, we do not object to your use of the consent at the partner level.



Without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest attributable to any partnership items (see section 6231(a)(3)), affected items (see section 6231(a)(5)) computational adjustments (see section 6231(a)(6)) and partnership items converted to nonpartnership items (see section 6231(b)). This agreement extends the period for filing a petition for adjustment under section 6228(b) but only if a timely request for administrative adjustment is filed under section 6227. For partnership items which have

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converted to nonpartnership items, this agreement extends the period for filing a suit for credit or refund under section 6532, but only if a timely claim for refund is filed for such items. In accordance with paragraph (1) above, an assessment attributable to any partnership item shall not terminate this agreement for other partnerships or for items not attributable to a partnership. Similarly, an assessment not attributable to a partnership shall not terminate this agreement for items attributable to a partnership.

If you wish to use a Form 872-A, the following additional language must be used:

The issuance of a notice of deficiency will not terminate this agreement under paragraphs (1) and/or (2) for the items described by this paragraph.

Before inserting the above language into the agreements to be executed by and and preface the suggested language with the following paragraph:

Regarding items from the which flow through to the :

Before inserting the suggested language into the agreements to be executed by the shareholders in S Corp., you may preface the suggested language with the following paragraph:

Regarding partnership items from the which flow through the to the taxable year ending December 31,

Although the above language does not specifically state that the agreement extends the time for a partner to file an administrative adjustment request, section 6227(b) provides that the period prescribed for fling an administrative adjustment request shall be extended for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b) and for 6 months thereafter.

This opinion is based upon the facts set forth herein. You should be aware that, under routine procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion

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should be considered to be only preliminary.

If you have any additional questions, please contact Rosemarie Dever Camacho at $(516)\,688-1701$.

DONALD SCHWARTZ
District Counsel

Ву:

ROSEMARIE DEVER CAMACHO Attorney